UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

| UNITED STATES OF AMERICA, Plaintiff, | A P 1 O 1 C A A - 1 A 1 |
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| •• | Case Number (K - 09 m) - 10036 PY7 |
| Clemento Hernando, Defendant. | Case Number <u>CR-09 mi -70036</u> PV7 ORDER OF DETENTION PENDING TRIAL |
| In accordance with the sail D. C. | |
| In accordance with the Bail Reform Act, 18 U.S. | S.C. § 3142(f), a detention hearing was held on/2/, 200. |
| - Translation of the present of the attorney | . hie . The United States was represented by |
| Assistant U.S. Attorney L. Devrity. | |
| PART I. PRESUMPTIONS APPLICABLE | |
| / / The defendant is charged with an offense de | escribed in 18 U.S.C. § 3142(f)(1) and the defendant has been |
| | |
| , I was a more might into (2) years has | elapsed since the date of conviction or the release of the person from |
| - , , , , , , , , , , , , , , , , , , , | |
| This establishes a rebuttable presumption that no | condition or combination of conditions will reasonably assure the |
| y person and the continuity. | • |
| / / There is probable cause based upon (the indi | ictment) (the facts found in Part IV below) to believe that the |
| defendant has committed an offense | (and reach found in fact IV below) to believe that the |
| A for which a maximum term of impri | sonment of 10 years or more is prescribed in 21 U.S.C. § 801 et |
| seq., § 951 et seq., or § 955a et seq., OR | or 10 years of more is prescribed in 21 U.S.C. § 801 et |
| B. under 18 U.S.C. § 924(c); use of a fi | rearm during the commission of a felony. |
| inis establishes a reduttable presumption that no | condition or combination of any tities are |
| appearance of the defendant as required and the safety of t | he community |
| No presumption applies. | 20 Community. |
| PART II. REBUTTAL OF PRESUMPTIONS, IF APPLICABLE | |
| / / The defendant has not come forward with any | evidence to rebut the applicable presumption[s], and he therefore |
| will be ordered detained. | ovidence to result the applicable presumption[s], and he therefore |
| / / The defendant has come forward with evidence | e to rebut the applicable programation F. Z. |
| | o to room the applicable presumption[s] to wit: |
| Thus, the burden of proof shifts back to the United | States |
| PART III. PROOF (WHERE PRESUMPTIONS REBUTTED OR | INADDI ICADI E) |
| Y The United States has proved to a preponderan | ace of the evidence that no condition |
| will reasonably assure the appearance of the defendant as re | equired AND/OR |
| / / The United States has proved by clear and conv | vincing evidence that no condition or combination of conditions |
| will reasonably assure the safety of any other person and the | community |
| PART IV. WRITTEN FINDINGS OF FACT AND STATEMENT O | DE REASONS FOR DETERMINANT |
| The Court has taken into account the factors set | t out in 18 U.S.C. § 3142(g) and all of the information submitted |
| at hearing and finds as follows: The defendant | out in 18 0.3.C. 9 5142(g) and all of the information submitted |
| He la undorumented as a sure | Description of Suscession of Suscession |
| the criminal justice surdens We to | and the sais o wong history of curtae with |
| his alcohol problem and | to an acord grobben. as an asult |
| automobiles uspiel have blowne & | the as does his convertions involving |
| alcohol and druck inder for | claries His substance aluse, both |
| Mohnton Condidans | and the welling to well wound orders with |
| // Defendant, his attorney, and the AUSA have wai | ved veritten findings |
| PART V. DIRECTIONS REGARDING DETENTION | ved written midings. |
| The defendant is committed to the custody of the Attorna | ey General or his designated representative for confinement in a |
| corrections facility separate to the extent practicable from person | or numiting or assistance of representative for confinement in a |
| appeal. The defendant shall be afforded a reasonable opposition | s awaiting or serving sentences or being held in custody pending |
| of the United States or on the request of an attached and | y for private consultation with defense counsel. On order of a court |

of the United States or on the request of an attorney for the Government, the person in charge of the corrections facility shall deliver

the defendant to the United States Marshal for the purpose of an appearance in connection with a court proceeding.

PATRICIA V. TRUMBULL United States Magistrate Judge

UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA

| | THE STATE OF THE OTHER |
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| UNITED STATES OF AMERICA, Plaintiff, | Case Number <u>CR-09 mi -70036</u> PY7 |
| Clemente Hernanda Defendant | ORDER OF DETENTION PENDING TRIAL |
| In accordance with the Bail Reform Act 1811SC | 8 3142(f) a detention have |
| Defendant was present, represented by his attorney | y 51-72(1), a detention nearing was held on |
| Assistant U.S. Attorney L. Deus fu | . The United States was represented by |
| PART I. PRESUMPTIONS APPLICABLE | |
| / / The defendant is charged with an offense descri | ibed in 18 U.S.C. § 3142(f)(1) and the defendant has been |
| offense, and a period of not more than five (5) years has elan | osed in 18 U.S.C. § 3142(f)(1) and the defendant has been (1) while on release pending trial for a federal, state or local osed since the date of conviction or the release of the person from |
| , | |
| This establishes a rebuttable presumption that no con | ndition or combination of conditions will reasonably assure the |
| - may of the person and the community. | |
| / / There is probable cause based upon (the indictor | nent) (the facts found in Part IV below) to believe that the |
| may be committed an offense | |
| A for which a maximum term of imprison | ment of 10 years or more is prescribed in 21 U.S.C. § 801 et |
| seq., § 951 et seq., or § 955a et seq., OR | 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 7 |
| B. under 18 U.S.C. § 924(c): use of a firear | rm during the commission of a felony. |
| this establishes a reductable presumption that no con | Idition or combination of conditions at |
| 11 state of the desirement as required and the safety of the | |
| No presumption applies. | JAN 222009 |
| PART II. REBUTTAL OF PRESUMPTIONS, IF APPLICABLE | Circ. |
| / / The defendant has not come forward with any evi | idence to rebut the applicable presumptions and be therefore |
| will be ordered domined. | JUSE THE ORIVIA |
| / / The defendant has come forward with evidence to | rebut the applicable presumption[s] to wit |
| | |
| Thus, the burden of proof shifts back to the United Sta | ites. |
| PART III. PROOF (WHERE PRESUMPTIONS REBUTTED OR IN | APPLICABLE) |
| 1 Ine United States has proved to a preponderance | of the evidence that no condition or combination of conditions |
| about the appearance of the defendant as regin | ired AND/OR |
| / / The United States has proved by clear and convinc | cing evidence that no condition or combination of conditions |
| assure the safety of any other person and the co | mmunity |
| PART IV. WRITTEN FINDINGS OF FACT AND STATEMENT OF F | REASONS FOR DETENTION |
| The Court has taken into account the factors set ou | at in 18 U.S.C. § 3142(g) and all of the information submitted |
| as houring and mids as 10110WS. The definitions is | changed with a violation of 2/150 8396 |
| He is undownerfled. as a suren | Le he has a long history Muntary with |
| the criminal pustice supreme we has | on alcohol nother as an adult |
| his alcohol problem continuel | e as does his convections involven |
| sustamobiles infrient have become fel | eries His substance aluse, both |
| allogot and ariss interfer with | his ability to abey was torders may |
| Southon Conditions. | |
| / / Defendant, his attorney, and the AUSA have waived | written findings. |
| PART V. DIRECTIONS REGARDING DETENTION The defendant is committed to the second secon | |
| Corrections facility concerns to the custody of the Attorney (| General or his designated representative for confinement in a |
| observed in the separate to the extent practicable from persons as | Walting or compagation of the last transfer of transfer of the last tran |
| appear. The detendant shall be altorded a reasonable opportunity to | T nrivate consultation with defense |
| of the United States or on the request of an attorney for the Government the defendant to the United States Marshal for the purpose of an appearance of the United States of the purpose o | lent the nerson in charge of the same at the case of the same of t |
| | Total a court proceeding. |

Dated: 1/22/09'
AUSA ___, ATTY ___, PTS ____ PA

PATRICIA V. TRUMBULL United States Magistrate Judge